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7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10
11 **Andres Gomez,**

12 Plaintiff,

13 v.

14 **Hudson Wines, LLC, a California**
Limited Liability Company

15 Defendant.

16 **Case No.**

17
18 **Complaint for Damages and**
Injunctive Relief for Violations
of: American's With Disabilities
Act; Unruh Civil Rights Act

19
20 **NOT RELATING TO A**
CONSTRUCTION-RELATED
BARRIER AS DEFINED IN CAL.
CIV. CODE § 55.3

21
22 Plaintiff Andres Gomez (“Plaintiff”) complains of Hudson Wines, LLC,
23 a California Limited Liability Company; (“Defendant”), and alleges as follows:
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25

26
27
28 **PARTIES:**

29 1. Plaintiff is a visually-impaired individual and a member of a protected
30 class of persons under the Americans with Disabilities Act. Plaintiff Talkback
31 or similar software to navigate websites and applications on electronic devices.

1 Plaintiff is legally blind¹ and cannot use an electronic device without
2 assistance of screen-reader software (“SRS”).

3 2. Defendant Hudson Wines, LLC, a California Limited Liability
4 Company (“Hudson Wines, LLC”), owned or operated Hudson Ranch located
5 in Napa County, California, in March 2021 and August 2021.

6 3. Defendant Hudson Wines, LLC owns or operates Hudson Ranch
7 located in Napa County, California, currently.

8 4. Defendant Hudson Wines, LLC, a Delaware Corporation owned or
9 operated Hudson Ranch website, with a root domain of:
10 <https://hudsonranch.com/>, and all related domains, sub-domains and/or
11 content contained within it, (“Website”) in March 2021 and August 2021.

12 5. Defendant Hudson Wines, LLC owns or operates Hudson Ranch
13 website currently.

14 6. Plaintiff does not know the true names of Defendants, their business
15 capacities, their ownership connection to the property and business, or their
16 relative responsibilities in causing the access violations herein complained of,
17 and alleges a joint venture and common enterprise by all such Defendants.
18 Plaintiff is informed and believes that each of the Defendants herein, is
19 responsible in some capacity for the events herein alleged or is a necessary
20 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
21 the true names, capacities, connections, and responsibilities of the Defendants
22 are ascertained.

23

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26 ¹ Plaintiff uses the terms “visually-impaired” or “blind” interchangeably to
27 refer to individuals, including himself, who meet the legal definition of
28 blindness. (visual acuity of 20/200 or worse.) Some individuals who meet
these criteria have no vision, others have limited vision.

1 **JURISDICTION & VENUE:**

2 7. The Court has subject matter jurisdiction over the action pursuant to 28
3 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
4 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq. (“ADA”)

5 8. This court has supplemental jurisdiction over Plaintiff’s non-federal
6 claims pursuant to 28 U.S.C. § 1337 because Plaintiff’s Unruh claims are
7 formed from the same case and/or controversy and are related to Plaintiff’s
8 ADA claims. A violation of the ADA is a violation of Unruh. (Cal. Code §51(f).

9 9. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b). Defendant
10 is subject to personal jurisdiction in this District due to its business contacts
11 with the District, and a substantial portion of the complained of conduct
12 occurred in this District.

13

14 **FACTUAL ALLEGATIONS:**

15 10. Plaintiff is a legally blind person and a member of a protected class
16 under the ADA. Plaintiff is proficient with and uses SRS to access the internet
17 and read internet content on computers and mobile devices.

18 11. Plaintiff cannot use a computer without the assistance of screen reader
19 software. (“SRS”).

20 12. Hudson Wines, LLC operates privileges, goods or services out of a
21 physical location in California. These services are open to the public, places of
22 public accommodation, and business establishments.

23 13. The Website is a nexus between Hudson Wines, LLC customers and the
24 terrestrial based privileges, goods or services offered by Hudson Wines, LLC.

25 14. Hudson Wines, LLC offers websites and digital booking as some of the
26 facilities, privileges, and advantages offered by Defendants to patrons of the
27 Hudson Wines, LLC in connection with their patronage at the Hudson Wines,
28 LLC

1 15. Among the services offered include: details about the wine and the
2 Hudson Wines, LLC itself, location and contact information; Hudson Wines,
3 LLC policies; information about wine, deals and promotions without any
4 ambiguity as to the amenities that would be available to the patron.

5 16. Plaintiff was a prospective customer who wished to access Defendant's
6 goods and services of the Hudson Wines, LLC.

7 17. Plaintiff visited the Website in March 2021 and August 2021 in search
8 of a winery/wine vineyard to potentially visit this location to purchase wine or
9 do some wine tasting or potentially make my own wine since we were in the
10 California area and potentially wanted to go to Northern California for this
11 experience since I have family who lives in Northern California.

12 18. When Plaintiff attempted to navigate the Website, Plaintiff encountered
13 numerous accessibility design faults that prevented him from navigating the
14 site successfully using SRS. Investigation into his experience revealed barriers,
15 including, but not limited to:

- 16 a. Images on the website lack a text equivalent readable by
17 SRS.
- 18 b. The visualization of the webpage contains impermissibly
19 low contrast enabling differentiation of background and
20 foreground elements.

21 19. These inaccessible elements rendered the ostensibly "accessible"
22 elements inaccessible as a result of difficulty and confusion navigating the
23 numerous inaccessible elements.

24 20. Currently, the defendants either fail to provide an accessible website or
25 Defendants have failed to maintain in working and useable conditions those
26 website features required to provide ready access to persons with disabilities.

27 21. Despite multiple attempts to access the Website using Plaintiff's
28 computer and mobile device, Plaintiff has been denied the full use and

1 enjoyment of the facilities, goods and services offered by Defendants as a
2 result of the accessibility barriers on the Website.

3 22. Plaintiff personally encountered accessibility barriers and has actual
4 knowledge of them.

5 23. By failing to provide an accessible website, the defendants denied
6 Plaintiff full and equal access to the facilities privileges or advantages offered
7 to their customers.

8 24. Plaintiff has been deterred from returning to the Website as a result of
9 these prior experiences.

10 25. The failure to provide accessible facilities created difficulty and
11 discomfort for the Plaintiff.

12 26. If the website had been constructed equally accessible to all individuals,
13 Plaintiff would have been able to navigate the Website and find information on
14 wine.

15 27. Additionally, Plaintiff is a tester in this litigation and seeks future
16 compliance with all federal and state laws. Plaintiff will return to the Website
17 to avail himself of its goods and/or services and to determine compliance with
18 the disability access laws once it is represented to him that the Hudson Wines,
19 LLC and Website are accessible.

20 28. Plaintiff is currently deterred from doing so because of Plaintiff's
21 knowledge of the existing barriers and uncertainty about the existence of yet
22 other barriers on the Website. If the barriers are not removed, Plaintiff will
23 face unlawful and discriminatory barriers again.

24 29. The barriers identified above violate easily accessible, well-established
25 industry standard guidelines for making websites accessible to people with
26 visual-impairments that use SRS to access websites. Given the prevalence of
27 websites that have implemented these standards and created accessible
28 websites, it is readily achievable to construct an accessible website without

1 undue burden on the Hudson Wines, LLC or a fundamental alteration of the
2 purpose of the Website.

3 30. Compliance with W3C Web Content Accessibility Guidelines
4 (“WCAG”) 2.0 AA standards are a viable remedy for these deficiencies and a
5 standard that has been adopted by California courts for website accessibility.

6 31. It’s been established that failure to remove these inaccessible conditions
7 violates the ADA and California law and requiring compliance with industry
8 access standards is a remedy available to the plaintiff.

9 32. The Website was intentionally designed, and based on information and
10 belief, it is the Defendants’, policy and practice to deny Plaintiff access to the
11 Website, and as a result, denies the goods and services that are otherwise
12 available to patrons of the Hudson Wines, LLC

13 33. Due to the failure to construct and operate the website in line with
14 industry standards, Plaintiff has been denied equal access to Defendant’s
15 Hudson Wines, LLC and the various goods, services, privileges, opportunities
16 and benefits offered to the public by the Hudson Wines, LLC

17 34. Given the nature of the barriers and violations alleged herein, the
18 plaintiff alleges, on information and belief, that there are other violations and
19 barriers on the website, and/or at the Hudson Wines, LLC, that relate to his
20 disability. In addition to the barriers he personally encountered, Plaintiff
21 intends to seek removal of all barriers on the Website that relate to his
22 disability. See Doran v. 7-Eleven (9th Cir. 2008) 524 F.3d 1034 (holding that
23 once a plaintiff encounters one barrier, they can sue to have all barriers that
24 relate to their disability removed regardless of whether they personally
25 encountered the barrier).

26 35. Plaintiff will amend the complaint, to provide further notice regarding
27 the scope of the additional demanded remediation in the event additional
28 barriers are uncovered through discovery. However, please be on notice that

1 the plaintiff seeks to have all barriers related to his disability remedied.
2

3 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS
4 WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
5 Defendants.) (42 U.S.C. section 12101, et seq.)

6 36. Plaintiff re-pleads and incorporates by reference, as if fully set forth
7 again herein, the allegations contained in all prior paragraphs of this
8 complaint. The Hudson Wines, LLC is a public accommodation with the
9 definition of Title III of the ADA, 42 USC § 12181.

10 37. The website provided by the Defendant is a service, privilege or
11 advantage and extension of Hudson Wines, LLC physical presence and
12 terrestrial services.

13 38. When a business provides services such as a website, it must provide an
14 accessible website.

15 39. Here, an accessible website has not been provided. A failure to provide
16 an accessible website is unlawful discrimination against persons with
17 disabilities.

18 40. Under the ADA, it is an act of discrimination to fail to ensure that the
19 privileges, advantages, accommodations, facilities, goods and services of any
20 place of public accommodation is offered on a full and equal basis by anyone
21 who owns, leases, or operates a place of public accommodation. See: 42 U.S.C.
22 § 12182(a). Discrimination is defined, *inter alia*, as follows: “A failure to make
23 reasonable modifications in policies, practices, or procedures, when such
24 modifications are necessary to afford goods, services, facilities, privileges,
25 advantages, or accommodations to individuals with disabilities, unless the
26 accommodation would work a fundamental alteration of those services and
27 facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).”

28 41. Here, the failure to ensure that the accessible facilities were available

1 and ready to be used by the plaintiff is a violation of the law.

2 42. Pursuant to 42 U.S.C. § 12188 and the remedies, procedures and rights
3 set forth and incorporated therein, Plaintiff requests relief as set forth below.

4

5 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
6 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
7 Code § 51-53.)

8 43. Plaintiff repleads and incorporates by reference, as if fully set forth
9 again herein, the allegations contained in all prior paragraphs of this
10 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, *inter alia*,
11 that persons with disabilities are entitled to full and equal accommodations,
12 advantages, facilities, privileges, or services in all business establishment of
13 every kind whatsoever within the jurisdiction of the State of California. Cal.
14 Civ. Code § 51(b).

15 44. The Unruh Act provides that a violation of the ADA is a violation of the
16 Unruh Act. Cal. Civ. Code § 51(f).

17 45. Defendants’ acts and omissions, as herein alleged, have violated the
18 Unruh Act by, *inter alia*, denying, or aiding, or inciting the denial of, Plaintiff’s
19 rights to full and equal use of the accommodations, advantages, facilities,
20 privileges, or services offered.

21 46. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
22 discomfort or embarrassment for the plaintiff, the defendants are also each
23 responsible for statutory damages, i.e., a civil penalty. Cal. Civ. Code §
24 55.56(a)-(c).

25 47. Pursuant to 42 U.S.C. § 12188 and the remedies, procedures and rights
26 set forth and incorporated therein, Plaintiff requests relief as set forth below.

1

2 **PRAYER:**

3 Wherefore, Plaintiff prays that this Court award damages and provide
4 relief as follows:

5 1. A Declaratory Judgment that at the commencement of this action
6 Defendants were in violation of the requirements of the ADA due to
7 Defendants' failures to take action to ensure that its Website was fully
8 accessible to and independently usable by blind and visually-impaired
9 individuals.

10 2. For equitable nominal damages for violation of civil rights. See
11 Uzuegbunam v. Preczewski, 141 S.Ct. 792 (2021) and any other equitable
12 relief the Court finds appropriate.

13 3. Pursuant to 42 U.S.C § 12181, a preliminary and permanent injunction
14 enjoining Defendants from violating the ADA with respect to its website.

15 4. Damages under the Unruh Civil Rights Act § 51², which provides for
16 actual damages and a statutory minimum of \$4,000 for each offense.

17 5. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
18 to 42 U.S.C. § 12205; and Cal. Civ. Code § 52.

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Dated: December 20, 2021

CENTER FOR DISABILITY ACCESS

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By: _____

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Amanda Seabock, Esq.
Attorney for Plaintiff

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² Note: the plaintiff is not invoking section 55 of the California Civil Code and is not seeking injunctive relief under the Disabled Persons Act at all.